

ORDINANCE NO. 14-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH APPROVING A SMALL-SCALE AMENDMENT TO THE COMPREHENSIVE PLAN OF THE TOWN OF FORT MYERS BEACH TO CREATE A TRANSFER OF DEVELOPMENT RIGHTS SENDING AREA OVERLAY AND APPLY A TRANSFER OF DEVELOPMENT RIGHTS SENDING AREA OVERLAY TO CERTAIN PROPERTY ON THE FUTURE LAND USE MAP; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapters 166 and 163 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Section 163.3187, Florida Statutes, provide that amendments to the Town of Fort Myers Beach Comprehensive Plan (Comp Plan) which are directly related to proposed small scale development activities may approved without regard to statutory limits on the frequency of consideration of amendments to such Comp Plan; and

WHEREAS, a small-scale development amendment may be adopted only under the conditions set forth in Section 163.3187, Florida Statutes and other provisions of State and local law; and

WHEREAS, James J. Jamieson has applied to the Town for an amendment to the Comprehensive Plan to create a Transfer of Development Rights Sending Area Overlay on the Future Land Use Map (FLUM) and apply the overlay to 266 Mango Street and 200 Chapel Street (the subject property); and

WHEREAS, the proposed amendment to the Comprehensive Plan to create a Transfer of Development Rights Sending Area Overlay on the FLUM and a revision to the Policy on Density Transfers is attached to this Ordinance as Exhibit A and hereby incorporated by reference; and

WHEREAS, in accordance with the requirement that the Town Local Planning Agency (LPA) is required to review all proposed amendments to the Comp Plan, the LPA on June 10, 2014, at a duly noticed meeting, conducted a hearing on this ordinance and provided the Town Council with its comments via LPA Resolution 2014-03 which was reviewed by the Town Council at hearing; and

WHEREAS, in accordance with the requirements of the Town Charter, the Land Development Code, the Comp Plan, and Florida Statutes, this ordinance was introduced before Town Council on October 6, 2014 and the Town Council conducted a duly noticed hearing on this ordinance on November 17, 2014, at which time the Town Council

considered the documents in the file, the testimony of all interested persons, the application, the LPA resolution and all other relevant matters; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety and welfare of the citizens of the Town.

IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The above “whereas” clauses are incorporated herein as though fully set forth.

SECTION 2. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER APPLICATION MEETS CRITERIA TO BE CONSIDERED FOR A SMALL-SCALE AMENDMENT. In accordance with the requirements of Section 163.187(c), Florida Statutes, the Town Council makes the following findings of fact:

- (1) the proposed amendment **DOES** involve a use of 10 acres or fewer;
- (2) the cumulative annual effect of the acreage of all small scale amendments adopted by the Town of Fort Myers Beach **DOES NOT** exceed a maximum of 120 acres in a calendar year;
- (3) the proposed amendment **DOES** involve a text change to the goals, policies, and objectives of the local government’s comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section;
- (4) the property **IS NOT** located in an “area of critical state concern”;
- (5) It **IS NOT** in the best interest of the health, safety and welfare of the Town’s residents and property owners for the Town Council to make this change to the FLUM and such change **IS NOT** necessary to provide for orderly future growth of the community; and
- (6) Applicant’s application **DOES** meet the statutory requirements to be considered for a small-scale amendment.

SECTION 3. FINDING OF FACT AND CONCLUSIONS OF LAW. The Town Council finds that the proposed FLUM amendment **IS NOT** clearly in the best interest of the health, safety and welfare of the Town’s residents, businesspersons and property owners and such change **IS NOT** necessary to provide for orderly future growth of the community, for the following reasons:

The proposed amendment will likely have a **NEGATIVE** impact on affected traffic, utilities, other services, and future capital expenditures.

SECTION 4. AMENDMENT OF COMPREHENSIVE PLAN FUTURE LAND USE MAP. The Council hereby **DENIES** applicants’ request to amend the Town Comprehensive Plan Future Land Use Map as set forth on Exhibit A.

SECTION 5. DIRECTION TO TOWN MANAGER. The Town Manager is hereby directed to send copies of the public notice for the Council hearing as well as a copy of the amendment as soon as possible following said hearing to the state land planning agency, the regional planning council and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan and shall otherwise comply in all respects to the requirements of Section 163.3187, Florida Statutes. Upon the Ordinance becoming effective as provided in Section 6 below, the Town Manager is directed to take all actions necessary to codify this amendment into the Comprehensive Plan Future Land Use Map.

SECTION 6. EFFECTIVE DATE. In accordance with the requirements of Section 163.3187, Florida Statutes, this ordinance shall become effective upon the expiration of 31 days after its adoption. However, if challenged within 30 days after adoption, this ordinance shall not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining this Ordinance is in compliance.

SECTION 7. CONFLICTS. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive shall apply.

SECTION 8. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held as invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and shall in no way affect the validity of all other provisions of this ordinance.

The foregoing ordinance was not enacted by the Town Council upon a motion by Council Member Rexann Hosafros and seconded by Councilmember Summer Stockton and, upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor
Rexann Hosafros
Summer Stockton

AYE
AYE
AYE

Dan Andre, Vice Mayor
Alan Mandel

AYE
AYE

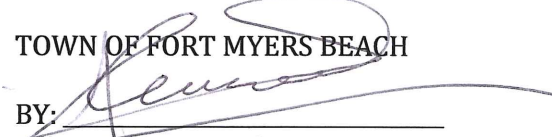
DULY PASSED AND ENACTED this 17th day of November, 2014.

ATTEST:


Michelle D. Mayher, Town Clerk

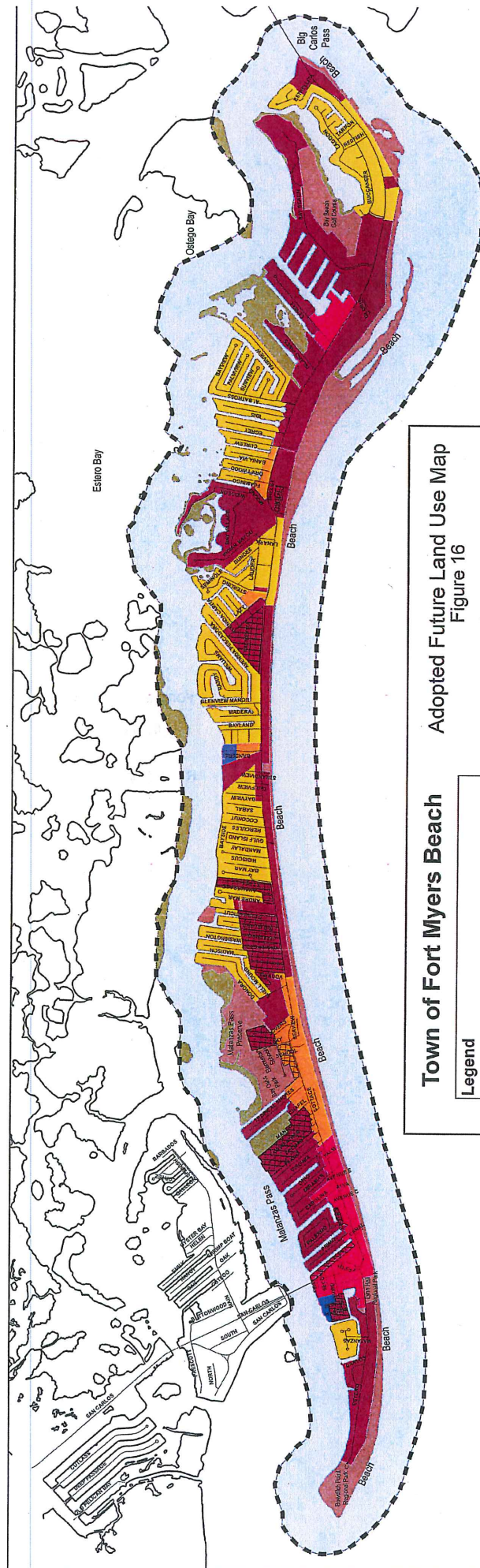
TOWN OF FORT MYERS BEACH

BY:


Anita T. Cereceda, Mayor

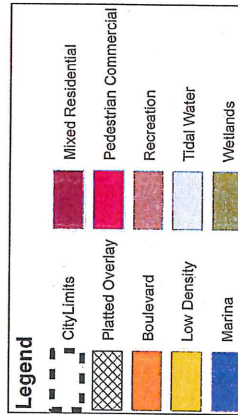
Approved as to legal form by:


Gray Robinson
Town Attorney



Adopted Future Land Use Map
Figure 16

Town of Fort Myers Beach



January 1, 1999

As Amended Through May 20, 2010

Originally prepared by Spilowski Planning Associates
and the City Property Services Office
Updated and Modified by the
Community Development Department